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No. 556 32

In the Supreme Court of the United States

October Term, 1945

The Order of United Commercial Travelers of America, a corporation, Petitioner,

vs

Edward C. Wolfe, Appellee

Appellee's Statement and Brief Objecting to and Denying Jurisdiction as Asserted by Petitioner.

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In the Supreme Court of the United States

October Term, 1945

No._____

The Order of United Commercial Travelers of America, a corporation, Petitioner,

vs.

Edward C. Wolfe, Appellee

Statement of Appellee, Edward C. Wolfe, Objecting To and Denying Jurisdiction as Asserted by Appellant.

Appellant, as Petitioner herein, invokes the jurisdiction of this Court asserting the Supreme Court of South Dakota under Section I of Article IV of the United States Constitution failed to give effect to the law of the State of Ohio in that: (1) under the Ohio law this action was barred because not brought within six months from the dissallowance of the claim; and (2) under the Ohio law the death was not occasioned by external, violent and accidental means.

The following decisions are believed to clearly deny the jurisdiction on this appeal.

I.

(a) The South Dakota Supreme Court in the opinion, 18 N.W. (2) page 755 at pages 757, 758, (R 56, 57) characterized the question of the three months' limitation in the insurance contract as relating to the remedy and as procedural and not substantive. This characterization by the State Court must be adopted and the law governing the

question as so characterized must be applied. Furthermore, the State Supreme Court at page 757 of the opinion (R 56) held Section 10.0705 South Dakota Code of 1939 (R 54), to be a statute of limitations.

Pacific Employers Insurance Co. vs Industrial Accident Commission 306 U.S. 493
Griffin vs McCoach, 61 S.Ct. 1023
Klaxon Co. vs Stentor Electric Mfg. Co. 313 U.S. 487
Erickson vs Order of United Commercial Travelers (Kas.) 176 Pac 989
Hawkinson vs Order of United Commercial Travelers (Tex.) 20 S.W. (2) 101
Dinnie vs Order of United Commercial Travelers (N.D.) 169 N.W. 811
Sternheim vs Order of United Commercial Travelers (S.C.) 93 S.E. 8

Such constitutional provision does not compel the courts of a State to give effect to the law of another State contrary to public policy affecting within the State persons, property or events in litigation.

Pac. Employers Ins. Co. vs Industrial Acc. Co. 306 U.S. 493 at pages 501, 502, 503.
Order of United Commercial Travelers vs Meinsen (8th) 131 Fed. (2) 176
Pink vs A.A.A. Highway Express Inc. 314 U.S. 201
Pritchard vs Norton 106 U.S. 124
John Hancock Mut. Life Ins. Co. vs Yates, 299 U.S. 178
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Bothwell vs Buckbee-Mears Co. 275 U.S. 274

II.

The Ohio Courts have not held that under the circumstances the death of Ford Shane was not produced by external violent and accidental means. The rule in Ohio is simply that the accident must be in the act that precedes the injury and not merely the unexpected result. It is upon this identical rule that the courts of divers states in similar anesthetic death cases hold, that a cause does not cease to be violent and external because the insured has an idosyncratic condition of mind or body predisposing him to injury; and also that an effect which is not the natural or probable consequence of the means which produced it, an effect which does not ordinarily follow and cannot be reasonably anticipated from the use of those means, an effect which the actor did not intend to produce and which he cannot be charged with the design of producing, is produced by accidental means; and that if in the act which precedes the injury, something unforseen, unexpected, unusual occurs which produces the injury, then the injury has resulted through accidental means. Hence, no occasion arose for the South Dakota Supreme Court to apply or to deny Petitioner full faith and credit to the public acts and judicial proceedings of the State of Ohio in respect to this assignment.

Silverstein vs Metropolitan Life Ins. Co. (N. Y.) 171 N.E. 914

Mutual Life Ins. Co. vs Dodge (CCA 4th) 11 Fed. (2) 486

Taylor vs N. Y. Life (Minn.) 222 N.W. 912

Wheeler vs Title Guaranty & Casualty Co. (Mich.) 251 N.W. 408

Whatcott vs. Continental Casualty Co. (Utah) 39 Pac (2) 733

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Vollrath vs Central Life Ins Co. (Ill.) 243 Ill. App. 181

Berkowitz vs N. Y. Life Ins. Co. (N.Y.) 10 N.Y.S (2) 106

Aetna Life Ins Co. vs Kent, 73 Fed. (2) 685 (6th Circuit)

Mangol vs Metropolitan Ins. Co. 103 Fed. (2) 14 (7th Circuit)

CONCLUSION

In Home Ins. Co. vs Dick and Sov. Camp vs Bolin which are typical of the cases cited by Petitioner in support of its claim of jurisdicton, there was no occurence in the state of the forum and the cases do not relate to persons and events within the state of the forum, and consequently no question of conflict of laws is involved. In Modern Woodmen of America vs Mixer the insurance certificate was issued in Illinois, delivered in South Dakota and sued upon in Nebraska. The question whether the decisions of Illinois were binding also upon the Courts of South Dakota, where the contract of insurance was finally consumated, was not involved.

In all the cases cited by petitioner substantive provisions of the contract were involved.

Respectfully submited,

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